

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

Orig Appellant's
77-1103

To be argued by
SUSAN E. SHEPARD

*B
P/S*

**United States Court of Appeals
FOR THE SECOND CIRCUIT**

Docket No. 77-1103

UNITED STATES OF AMERICA,

Appellee,

—against—

STEVEN STAVREDES,

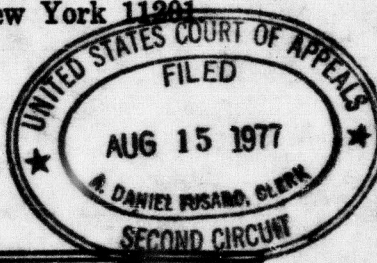
Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR APPELLEE

DAVID G. TRAGER,
United States Attorney,
Eastern District of New York,
225 Cadman Plaza East,
Brooklyn, New York 11201

ALVIN A. SCHALL,
SUSAN E. SHEPARD,
Assistant United States Attorneys,
Of Counsel.



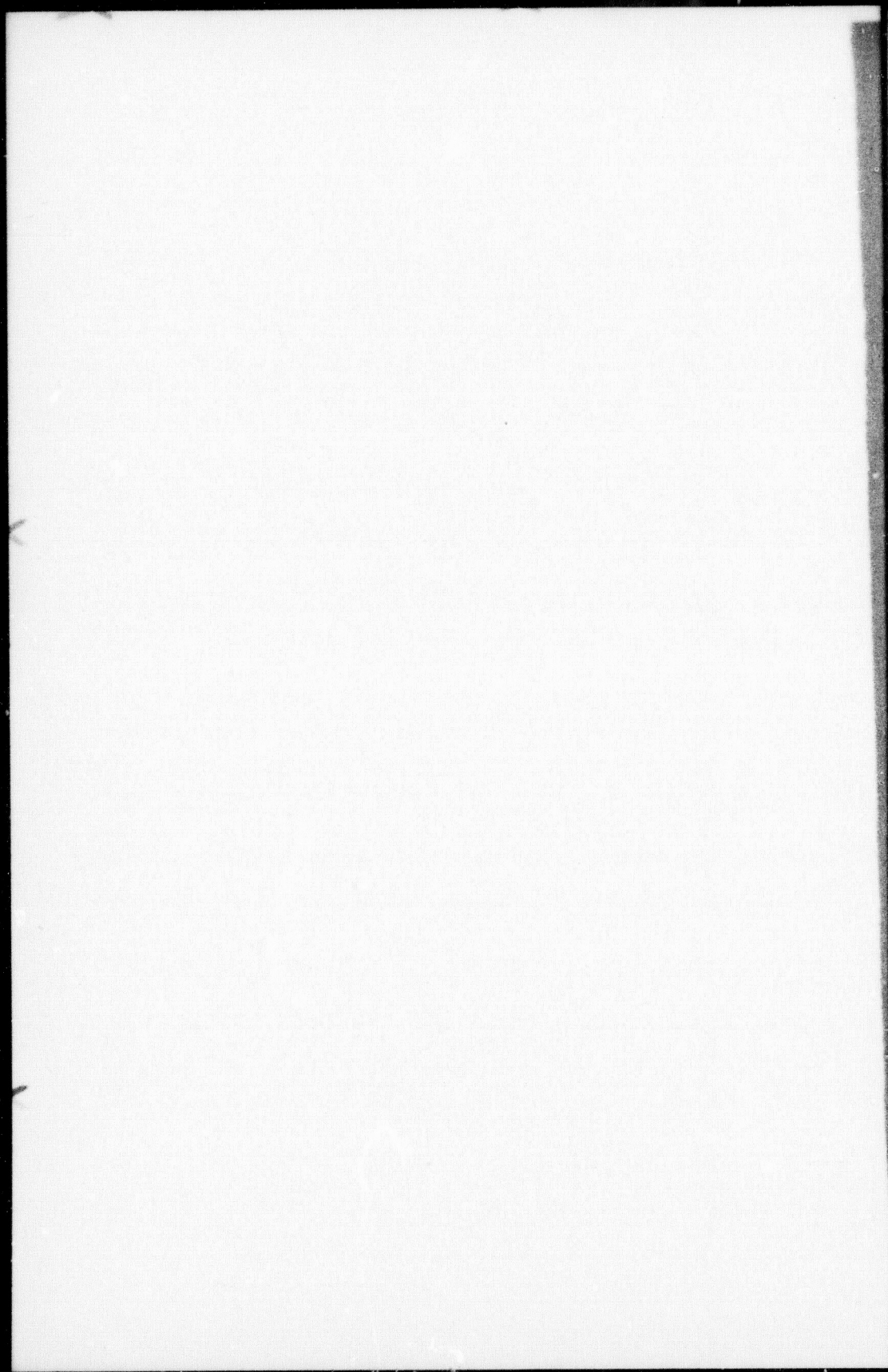


TABLE OF CONTENTS

	PAGE
Preliminary Statement	1
Statement of Facts	2
A. The Government's Case	2
B. The Defense Case	6
C. The Rebuttal Case	7
ARGUMENT:	
The Court's Charge on Intent Was Proper	7
CONCLUSION	12

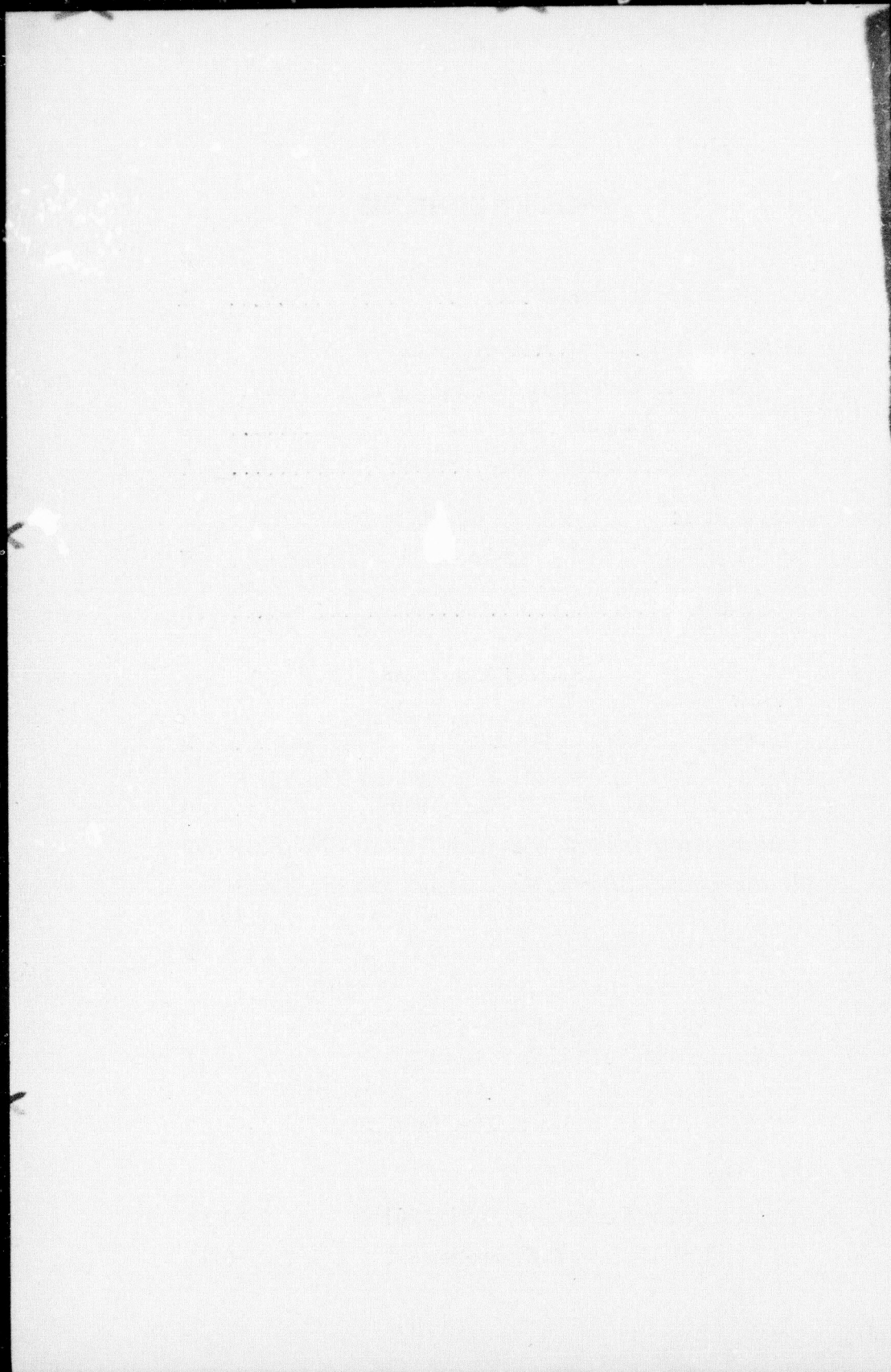
TABLE OF CITATIONS

Cases:

<i>Morissette v. United States</i> , 342 U.S. 246 (1952) . . .	9
<i>United States v. Barash</i> , 412 F.2d 26 (2d Cir.), cert. denied, 396 U.S. 832 (1969)	10
<i>United States v. Byrd</i> , 352 F.2d 570 (2d Cir. 1965)	9
<i>United States v. Irwin</i> , 354 F.2d 192 (2d Cir. 1965) 9, 10, 11	
<i>United States v. Park</i> , 421 U.S. 658 (1975)	9
<i>United States v. Pomponio</i> , 97 S. Ct. 22 (1976)	9
<i>United States v. Seuss</i> , 474 F.2d 385 (1st Cir.), cert. denied, 412 U.S. 928 (1973)	11
<i>United States v. Winston</i> , — F.2d —, Doc. No. 76- 1436, Slip op. 4445 (2d Cir. June 23, 1977) . . .	9

Statutes:

Title 18, United States Code, Section 201 9, 10, 11
Title 21, United States Code, Section 622 . . . 1, 7, 8, 10, 11



United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1103

UNITED STATES OF AMERICA,

Appellee,

—against—

STEVEN STAVREDES,

Appellant.

BRIEF FOR APPELLEE

Preliminary Statement

Appellant Steven Stavredes appeals from a judgment of conviction entered on January 28, 1977, after a jury trial in the United States District Court for the Eastern District of New York (Weinstein, J.). Appellant was convicted on six counts of receiving money from federally-inspected meat packing companies in the course of his employment as a meat inspector for the United States Department of Agriculture, in violation of Title 21, United States Code, Section 622. He was sentenced to concurrent terms of eighteen months on each count. Appellant is presently free on bail pending appeal.

On this appeal, appellant contends that the court's charge eliminated criminal intent as an element of the crime and that, as a result, the judgment of conviction should be reversed.

Statement of Facts

A. The Government's Case.

The Meat Inspection Act of 1907 requires meat packing companies engaged in interstate commerce to apply for and receive Federal inspection. Under the Act, a meat inspector employed by the Department of Agriculture is assigned to each such company on a rotating basis. It is the inspector's job to examine the establishment and the meat it sells. If the inspector finds a violation involving sanitary conditions in the plant or adulterated carcasses or meat, he reports it to a representative of the company, and it must be corrected. In order to insure that no adulterated meat products reach the public, an inspector is empowered to shut down the entire plant until the violation is corrected.

The testimony of the Government's witnesses disclosed that payments by meat packing companies in the Fort Green Market in Brooklyn, New York to Federal inspectors were widespread. The payments were made to avoid harrassment by inspectors during their tours of duty. Thus, for example, a corrupt inspector would extort and receive money from a meat packer in return for not slowing down or even stopping a plant's operation for some minor violation of the standards prescribed pursuant to the Meat Inspection Act. Not all inspectors engaged in such conduct. However, to avert the possibility of harrassment, and in response to outright demands by some inspectors, companies made weekly payments to many inspectors during the period the inspectors were assigned to their plants. After the first payment to an inspector, he would continue to point out violations and require that they be corrected, but what the plant operators regarded as harrassment would cease (30-33, 64-67, 83-86, 102-104, 127-128, 135-137, 156-161).¹

¹ Unless otherwise indicated, references are to pages of the trial transcript.

Beginning in 1970, appellant was a Department of Agriculture Meat Inspector. Between May, 1973, and January, 1975, he was assigned to certain meat packing companies in the Fort Green Meat Market. The Government, in its case, offered the testimony of representatives of six federally-inspected meat packing companies in the Fort Green Market. They testified that they paid appellant between \$25 and \$50 per week at various times when he was assigned to their companies during that period.²

Karl H. Paulus, president of Paulus Packing, Inc., testified that every Friday during the period when appellant was assigned to his plant as an inspector, he (Paulus) paid appellant thirty dollars (31-32). These payments began in the middle of the first week appellant was assigned to the plant. He told Paulus he wanted to talk to him, led him to a deserted hallway, told him the plant was in very poor condition and said that he was a tough inspector. Paulus told appellant, "We'll get together", and appellant left. That Friday, and on each Friday thereafter, Paulus paid appellant thirty dollars, the same amount he had been giving the previous inspector (30-31).

Leonard Katz, president of AAA Meat Provisions, Inc., stated that he had paid appellant fifty dollars each week he was assigned to his company, usually on Fridays (65-66). Katz testified that appellant was "very rough in the beginning", pointing out violations and requiring Katz and his employees to "stop working and do it im-

² Appellant conceded, and the parties stipulated, that during the periods charged in the indictment, appellant was a United States Department of Agriculture Meat Inspector assigned to the following companies: Paulus Packing, Inc.; AAA Meat Provisions, Inc.; George Korn & Sons, Inc.; Summit Packing; Bornstein Bros., Inc.; and Jacob Zucker, Inc. In addition, appellant's time and attendance records, signed by him and establishing these stipulated facts were received in evidence (23-25).

mediately." (64). Then, at some point during the first two weeks, appellant told Katz, "if I would take care of him, things would get easier." (64-65). Katz understood appellant to mean he wanted to be paid and gave him fifty dollars each week. After that, Katz testified, appellant did his job but didn't require all violations to be corrected immediately. (64-66).

Steven Korn, president of George Korn & Sons, Inc., testified that during appellant's first week at the company "he found a million things wrong." (85). In the middle of that week, appellant took Korn and his foreman downstairs and asked them, "Do I have to use a light stick or a heavy stick?" (83). Naturally, Korn understood this to mean that appellant wanted to be paid or he would "give us a hard time." Thus, each week thereafter Korn gave his foreman twenty-five dollars for appellant (83-84). After that, Korn testified, appellant gave a "normal type of inspection." (85).

Ralph Eisemann, president of Summit Packing Corp., testified that he paid appellant thirty dollars on alternate Fridays when appellant was assigned to his plant (103-104). On the Friday's when Eisemann was not at the plant, the payments were made by Gerhard Wolf, Eisemann's partner (127-128).

Jack Bornstein, owner of Bornstein Brothers, Inc., stated that he paid appellant twenty-five dollars each Friday during the period that he was assigned to his company (136). On the first Friday when appellant was assigned to Bornstein Brothers, he asked Bornstein, "Are you ready to take care of me now?" (135). Bornstein understood appellant to be asking for money. He put twenty-five dollars, the amount he had paid some previous inspectors, in a roll of toilet paper in his bathroom, and appellant went in after him and removed it. The process was repeated every Friday thereafter (135-137).

Jeffrey Rubin, the president of Jacob Zucker, Inc., testified that on his first day inspecting the company appellant told him there were many violations that had to be corrected. After the violations were corrected, appellant asked Rubin whom he should "see at the end of the week?" (157). The following day, appellant said that there were numerous violations and that he would tie up the plant. He also said to Rubin "At the end of the week you are going to have to give me double." (158). Rubin understood appellant to mean he wanted fifty dollars instead of the twenty-five dollars he gave the previous inspector. Rubin spoke to appellant's supervisor and the harassment stopped. Nevertheless, appellant continued to receive payment from Jacob Zucker (157-159). Each week, Rubin gave to his foreman twenty-five dollars to give to appellant (160-161).³

³ It was stipulated by the parties that, if called upon to testify, an appropriate representative of the Department of Agriculture would have identified certain Department of Agriculture records, including appellant's signed oath of office which he took upon his appointment as a United States Department of Agriculture Meat Inspector (25, Govt. Exh. 1) and a two page description of appellant's job and responsibilities (25, Govt. Exh. 2).

It was also stipulated that if called as a witness, Harry Wood, Finance Manager in the Philadelphia office of the Department of Agriculture, would have testified that each of the meat companies whose representatives testified had sought and received federal inspection (25, Govt. Exh. 6, 7, 8, 9, 10, and 11); that appellant was required every two weeks to fill out and sign a time and attendance record showing the places he worked during that two week period as well as the number of hours that he worked. Wood would further have identified a time and attendance bulletin (25, Govt. Exh. 4) and have testified that it directs meat inspectors how to complete the time and attendance record. Further, Wood would have identified appellant's time and attendance records for the period beginning January, 1973, through the year 1975 (25, Govt. Exh. 5), which established that appellant was assigned to Paulus Packing Co. and Summit Packing Corp. between May 13, 1973, and September 1, 1973; to George Korn

[Footnote continued on following page]

B. The Defense Case.

Appellant, who did not testify, called seven witnesses. Bernard Landau, a New York City Transit Detective, said that he had known appellant ten years and that he had a good reputation in the community (59-60). Charles Cunningham, a meat packer, stated that appellant had worked for him for fifteen years, beginning in 1955, and had progressed to a supervisory position (189-190). Aldo Bacon, a meat packer, testified that appellant asked for no money when he was an inspector at his plant between January and July, 1976 (182-186). Roy Pitchal, a manufacturer of corned beef, stated that appellant took no money from him during his period as an inspector at his place of business between July and December, 1975 (187-188). It was stipulated that representatives of two other meat packers, Holland Beef and Super City Meats, Inc., would have testified that appellant asked them for no money during his tours of duty at their plants from July, 1975, to January, 1976, and from January to July, 1976, respectively (215).

Appellant also called two employees of the United States Department of Agriculture. George Puchta, Area Supervisor for the New York City Inspection Program, testified that the condition of the Fort Green Market was marginally acceptable, that companies there had ratings of two and three on a scale of one to four, and that ap-

& Sons, Inc. between January 6, 1974, and July 4, 1974; to Jacob Zucker, Inc. and Bornstein Brothers, Inc. between January 6, 1974, and July 6, 1974; and to AAA Meat Provisions, Inc. for a period between July 6, 1974, and July 4, 1975.

Wood would also have identified a booklet entitled "*Employee Responsibility and Conduct*" (25, Govt. Exh. 33) and two documents, signed by appellant, in which he acknowledged having read and discussed with his supervisor the regulations contained in the booklet (25, Govt. Exh. 31, 32).

pellant was trained and regarded as a good inspector (191-202). Vincent Joseph Esposito, a supervisor, testified that the buildings at Fort Greene were old and had deficiencies and that it was primarily the job of the inspectors to look out for contaminated products (209-212).

Finally, appellant called Arturo Ruemmeley, who, while working as an inspector, was a government informant. Ruemmeley, who had a 1972 counterfeiting conviction, testified that he was trained by appellant but that appellant never told him about payoffs. Ruemmeley said that though he was wired during the time he worked as an inspector, he did not have any tapes of appellant (220-227). On cross-examination, though, Ruemmeley told of a conversation he had with appellant when he was an inspector during which appellant complained because his supervisor was taking part of the money he got from the packers (228-230).

C. The Rebuttal Case.

The Government called representatives of three meat packing companies located in Manhattan. All three, Armand Yannone, Joseph Amiglio, and Robert Sovak, testified that they made weekly payments to appellant when he was assigned to their companies for various periods between January, 1972, and May, 1975 (243-244, 255, 264-266). All three testified that they stopped paying all inspectors after they became aware of the investigation which was, according to Amiglio and Sovak, some time in the summer of 1975 (244, 256, 266).

The Court's Charge on Intent Was Proper

Appellant claims that his conviction should be reversed because the court's charge allegedly eliminated criminal intent as an element of the crime under Title 21, United States Code, Section 622. We disagree.

The portion of Title 21, United States Code, Section 622 under which appellant was convicted provides in pertinent part, as follows:

" . . . [A]ny inspector, deputy inspector, chief inspector, or other officer or employee of the United States authorized to perform any of the duties prescribed by this subchapter . . . who shall receive or accept from any person, firm, or corporation engaged in commerce any gift, money, or other thing of value, given with any purpose or intent whatsoever, shall be deemed guilty of a felony and shall, upon conviction thereof, be summarily discharged from office and shall be punished by a fine not less than \$1,000 nor more than \$10,000 and by imprisonment not less than one year nor more than three years."

In defining criminal intent for the jury in this case, Judge Weinstein gave the following charge:

"[Y]ou must find that he received the money knowingly and wilfully and purposely and not by any accident, mistake, inadvertance or misunderstanding." (321)

The court's instructions were entirely correct. The applicable part of Section 622 makes it a crime for an inspector to merely receive or accept money from "any person, firm or corporation engaged in commerce." In contrast, the immediately preceding portion of Section 622 makes it an offense for an inspector to receive money from "any person, firm or corporation . . . given with intent to influence his official action," while another part of the statute prohibits payments to inspectors "with intent to influence said inspector . . . in the discharge of any duty provided for in this subchapter."

Congress clearly chose not to impose a requirement of specific intent with respect to the part of Section 622

under which appellant was convicted. Thus, the Government had only to establish here the general kind of criminal intent which is usually a necessary element to be proven in any crime. *Morisette v. United States*, 342 U.S. 246 (1952); *United States v. Park*, 421 U.S. 658 (1975); see also, *United States v. Winston*, Doc. No. 76-1436, Slip op. 4445 (2d Cir. June 23, 1977). And generally Congress uses such terms as "intentional", "willful", "knowing", "fraudulent" or "malicious" to describe the criminal intent that the Government is required to prove. *Morisette v. United States*, *supra* at 264. The Supreme Court has stated that "willfulness in this context simply means a voluntary, intentional violation of a known legal duty". *United States v. Pomponio*, 97 S. Ct. 22 (1976).⁴

This conclusion is supported by this Court's interpretation of the provisions of Title 18, United States Code, Section 201, dealing with bribery of public officials.

⁴ In *United States v. Irwin*, 354 F.2d 192 (2d Cir. 1965), this Court set forth what must be shown to establish that a defendant acted with the requisite criminal intent:

"[I]t is necessary that the Government prove that he committed the act prohibited knowingly and purposefully and not through accident, misunderstanding, inadvertance or other innocent reasons." *Id.* at 197.

As noted above, it was in precisely these terms that Judge Weinstein instructed the jury in this case. Thus, the record flatly contradicts any contention by appellant that the Court eliminated criminal intent as an element of the crime. *United States v. Byrd*, 352 F.2d 570 (2d Cir. 1965), cited by appellant, does not stand for any different proposition. In *Byrd*, the Second Circuit held that the trial court did not adequately charge the jury that criminal intent was an element of the crime which required proof beyond a reasonable doubt. Here, however, the court instructed the jury that with respect to the critical element of the offense (the receiving of the money) it had to find beyond a reasonable doubt that appellant acted with the necessary criminal intent (197).

Thus, it has held that the gratuity provisions, Subsections (f) through (i), require no proof of specific intent.

Subsection (f) of Section 201 is a gratuity count similar to the portion of Section 622 appellant was convicted of violating. It imposes criminal liability upon:

"Whoever . . . directly or indirectly gives, offers, or promises anything of value to any public official . . . for or because of any official act performed or to be performed by such public official . . ."

The Second Circuit, in interpreting Subsection (f) has held that it requires no proof of specific intent to influence the official. *United States v. Irwin, supra*, 354 F.2d 192; *United States v. Barash*, 412 F.2d 26 (2d Cir. 1969). Thus, the Court in *Irwin*, stated:

"The awarding of gifts thus related to an employee's official acts is an evil in itself, even though the donor does not corruptly intend to influence the employee's official acts, . . ." *Id.* at 196.

In reaching this result, the Court in *Irwin* contrasted the different subsections of the statute, noting that some require proof of specific intent while others do not:

"The intent to influence, accompanying the corrupt giving or accepting of something of value, is an essential element of § 201(b, c, d, e) which Congress dealt with in separate subsections, and for the violation of each of which it attached severe penalties. No similar provisions concerning corrupt giving and specific intent to influence or induce were included in § 201(f, g, h, i), and the penalty provided for a violation of any of these subsections was much less severe. Obviously Congress made a distinction between the two groups of subsections and purposely omitted from the

latter group the description of the specific intent which was an essential element of the former." *Id.* at 197.

The Court emphasized, however, that proof of criminal intent was still required under Subsection (f):

"Although the specific intent of subsections (b) through (e) are not required, nevertheless, to convict an accused under subsections (f) through (i), it is necessary that the Government prove that he committed the act prohibited knowingly and purposefully and not through accident, misunderstanding, inadvertance or other innocent reasons." *Id.* at 197.

As already shown, the charge of the court in the present case was precisely in accord with this Court's holding in *Irwin*. Thus, the Court cautioned the jury that it did not have to find that the money was given or received with any specific intent that it influence conduct, only that it was received knowingly and not by mistake. (321).

Although the Second Circuit has not construed the intent requirement of Section 622, the First Circuit has, in *United States v. Suess*, 474 F.2d 385 (1st Cir. 1973). Citing *Irwin*, it noted in Section 622 "the absence of a requirement that the government prove intent, either of the donor to influence official conduct, or of the recipient to alter his performance, . . ." *Id.* at 389, footnote 8.

Appellant's claim is without merit.

CONCLUSION

The judgment of conviction should be affirmed.

Dated: Brooklyn, New York
August 12, 1977

Respectfully submitted,

DAVID G. TRAGER,
*United States Attorney,
Eastern District of New York,
225 Cadman Plaza East,
Brooklyn, New York 11201.*

ALVIN A. SCHALL,
SUSAN E. SHEPARD,
*Assistant United States Attorneys,
Of Counsel.*

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK } ss

DOLORES M. BYRD being duly sworn,

deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 15th day of August 1977 he served a copy of the within
BRIEF FOR THE APPELLEE

by placing the same in a properly postpaid franked envelope addressed to:
MARTIN ERDMAN, ESQ., LEGAL AID SOCIETY, 509 U. S. COURTHOUSE, FOLEY SQUARE,
NEW YORK, NEW YORK 10007

and deponent further says that he sealed the said envelope and placed the same in the mail chute
drop for mailing in the United States Court House, 225 Cadman Plaza East, Borough of Brooklyn, County
of Kings, City of New York.

Dolores M. Byrd

Sworn to before me this
15th day of August 1977

Barbara A. Allen

BARBARA A. ALLEN
Notary Public, State of New York
No. 24-4646824
Qualified in Kings County
Commission Expires March 30, 1979

